

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7569

BILL NUMBER: HB 1454

NOTE PREPARED: Jan 8, 2005

BILL AMENDED:

SUBJECT: Domestic Violence and Civil Protection Order Act.

FIRST AUTHOR: Rep. Lawson L

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that a court may authorize a search warrant for a law enforcement officer to seize firearms, ammunition, or deadly weapons pursuant to the civil protection order law if there is probable cause. The bill provides that a person whose weapons are seized pursuant to the civil protection order law may petition the court for the return of the weapons. It provides that certain fees will not be charged concerning foreign protection orders. It also provides that a person who has a conviction for a crime that has similar elements to domestic battery in another jurisdiction and is convicted of domestic battery commits a Class D felony.

Effective Date: July 1, 2005.

Explanation of State Expenditures: *Weapons Seizure:* This bill allows a court to authorize a search warrant for a law enforcement officer to seize firearms, ammunition, or deadly weapons if it appears from a petition or modification for an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required.

Under current law, a law enforcement officer may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the law enforcement officer has: (1) probable cause to believe that a crime involving domestic or family violence has occurred; (2) a reasonable belief that the firearm, ammunition, or deadly weapon: (A) exposes the victim to an immediate risk of serious bodily injury; or (B) was an instrumentality of the crime involving domestic or family violence; and (3) observed the firearm, ammunition, or deadly weapon at the scene during the response. In addition, the court may prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon and direct the respondent to surrender the firearm,

ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.

Background Information: In CY 2004, there were 25,067 domestic or family violence protective orders filed. Protective orders have a time limit of two years, however, a court may set a longer time limit if it sees reason to do so.

Written Notices: The bill requires the court to provide the respondent with a written notice of the procedures required for a respondent to have a firearm, ammunition, or a deadly weapon returned.

Increased Court Time: The bill allows a respondent to file a written motion with the court seeking the return of any firearm, ammunition, or deadly weapon within 30 days of the expiration of an order for protection. Currently, individuals are able to obtain their weapon from a law enforcement agency following the expiration of a protective order. This bill could increase court time, however, any additional court time is likely minimal. The number of persons who would file a written motion with the court are unknown.

Weapons Storage: The Indiana State Police (ISP) reports that if law enforcement agencies choose to not charge a fee for the storage of a weapon, minimal increases in expenditures are expected.

Forfeiture of a Weapon: If a respondent fails to file a motion for return of their the firearms, ammunition, or deadly weapons within 30 days after the expiration of the protective order, they shall be forfeited to the law enforcement agency storing the weapons. Current statute requires that seized weapons be destroyed through (a) public sale, (b) destruction, or (c) release to the ISP laboratory or forensic laboratory for research. The ISP reports that any increase in expenditures for destruction of a weapon is likely minimal.

Penalty Provision: The bill makes it a Class D felony to have a conviction in any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to domestic battery. There is no data which indicates the number of convictions that this felony would create. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Weapons Storage:* The bill allows a law enforcement agency to charge a fee for the storage of any firearms, ammunition, or deadly weapons. The amount of this fee may not exceed the actual cost incurred by the agency. Increased revenue from fees is dependent on whether or not a law enforcement agency chooses to charge a fee and what the amount of the fee is. The actual amount of time that the weapon is stored is dependent on the length of the protection order and whether or not the respondent files a written motion within the required 30-day period.

Penalty Provision and Court Fees: If additional court cases or civil actions occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000.

Explanation of Local Expenditures: *Penalty Provision:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional

expenditures would likely be small.

Explanation of Local Revenues: *Penalty Provision and Court Fees:* If additional court actions or civil actions occur or a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, city and town courts, local law enforcement agencies.

Information Sources: Steve Hillman, Indiana State Police, 232-5899; Jeff Bercovitz, Judicial Center of Indiana, 232-1313; Amy Merritt, Indiana Coalition Against Domestic Violence, 917-3685.

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